

# EXHIBIT 14, Part 2

1 other class representatives in this case who adequately  
2 represent Mr. Shepherd and the other class members.  
3 Shepherd's counsel has offered no argument why they  
4 believe these other six class representatives are  
5 inadequate to represent his interests and the class  
6 members' interest.

7 Your Honor, Mr. Shepherd has not met his burden  
8 for intervention of right under Arkansas law, nor has  
9 he made any compelling argument for permissive  
10 intervention. His only reason for intervening is to  
11 delay and/or derail this settlement. This is not a  
12 reason for allowing the intervention, especially given  
13 that settlements are favored under the law in Arkansas.  
14 Mr. Shepherd's motives run counter to this established  
15 legal principle.

16 Furthermore, Your Honor, even if Mr. Shepherd  
17 were allowed to intervene, he would only be pursuing  
18 claims already brought by the class representatives.  
19 His proposed complaint in intervention contains causes  
20 of action that were already included in the complaint  
21 filed by the class representatives in this action.  
22 Like Mr. Crager this morning, he would bring nothing  
23 new to the litigation.

24 As we stated this morning, Your Honor, we can  
25 find no Arkansas Supreme Court cases allowing an

1 intervention in a settlement class setting. It is not  
2 necessary or warranted in this case. Allowing an  
3 intervention would prejudice the parties and would run  
4 counter to the legal principles that settlements are  
5 favored under the law in Arkansas.

6 And for these reasons, we believe Mr. Shepherd's  
7 motion should be denied. Thank you, Your Honor.

8 THE COURT: Checking to make sure before we got  
9 to you. We were there. All right.

10 MR. DAN TURNER: I am going to start with my  
11 rebuttal, Your Honor. I am going to start all the way  
12 back to Mr. Leventhal, if I can. He was concerned  
13 because he said our only -- Mr. Shepherd is only trying  
14 to come in and bust up the settlement. That's all  
15 that's happened. There's been no litigation here. A  
16 complaint, an answer, and a settlement. I mean,  
17 there's no litigation for Mr. Shepherd to step into.  
18 The settlement is the issue. It certainly is.

19 They want to make a big issue about how we've  
20 raised no new claims, but they jumped right to  
21 settlement. They came into this court together, on the  
22 same side, to ask the Court to approve a settlement, a  
23 settlement that -- and you can look at the class  
24 notice. On page 12 and 13, it says it will apply that  
25 South Carolina statute consistent with its definition

1 of actual charges. And furthermore, they talk about  
2 information and misinformation and what not. That  
3 notice that went to every class member, whether it be  
4 115,000 -- which I think is what the Court was told at  
5 the preliminary fairness hearing, or a quarter of a  
6 million, which is another figure I've seen.

7 At any rate, however many people it went to, that  
8 notice, there's a statute 38-71-42(a) that doesn't  
9 exist. There's not a class member in the United States  
10 that can find that statute because it doesn't exist.  
11 They put the wrong statute number in there. But on top  
12 of all of that, they're going to apply that South  
13 Carolina statute across the boards.

14 Now, he wants to say that we've inaccurately  
15 described the settlement. That's inaccurate  
16 information that was given to people that are expected  
17 to take that notice and make a decision as to what to  
18 do with it, whether or not to participate in that  
19 settlement. It's concerning that every one of these  
20 cases were in federal court.

21 And truly, Your Honor, before you even waste any  
22 time looking at any of this, you should convince  
23 yourself that there is jurisdiction because every one  
24 of these cases started out, either by the plaintiffs  
25 alleging or the defendants successfully removing cases

1 to federal court under CAFA. And now they've come back  
2 here. If they mediated this case because a federal  
3 judge somewhere told them to, why didn't they settle  
4 this case in front of that judge, the judge that was  
5 familiar with the parties and the action.

6 I suspect it's because insurance commissioners,  
7 attorneys general, and other federal judges that had  
8 similar actions might have had something to say about  
9 that. But at any rate, those are issues that go  
10 directly to representation and concerns that  
11 Mr. Shepherd has, and they're legitimate concerns.

12 There was a discussion that somehow Mr. Shepherd,  
13 I guess -- I think Ms. McCabe said that he would pay  
14 less in premiums. I don't think she meant to say that.  
15 I think she meant he wouldn't pay any more in premiums.  
16 I don't think that the settlement agreement confers a  
17 discount to him for what his premiums are. I think  
18 there was some sort of agreement -- I'll get into that  
19 later about the terms of the settlement.

20 But what is important that she talked about was  
21 the Ballard case. And again, Your Honor, we were  
22 involved in that case. Judge John Thomas presided over  
23 that case. There was a motion to intervene that was  
24 filed two days before the fairness hearing in a case  
25 that had been litigated for three years and appealed

1 twice. I'm sorry, Your Honor.

2 Just as quickly as Mr. Shepherd could move to  
3 intervene in this case, he did. It's just that it  
4 moved rapidly. Not by any choice or fault of him, but  
5 because the complaint was filed and almost immediately,  
6 there was a settlement proposed.

7 I don't think this Court needs to consider the  
8 federal rules, any federal authority from the Second  
9 Circuit, or Alabama or anywhere else with respect to  
10 the issue of permissive intervention. And I also don't  
11 think there's any dispute whatsoever that the first  
12 prong of permissive intervention that says that there's  
13 a similar claim or defense by the claimant is met here.

14 The other aspect of that is undue prejudice or  
15 delay. And again, we're talking about a nationwide  
16 class action that involves a quarter million people,  
17 and we're barely six months into it. And as this Court  
18 recalls, we were here ready to argue Mr. Shepherd's  
19 intervention motion once before, and we didn't delay  
20 that hearing. We did not move forward on it, but we  
21 were prepared to argue it.

22 I just don't want this Court to think that  
23 Mr. Shepherd has taken any steps to delay this Court  
24 from taking that action. I don't think there's any  
25 delay. I don't think there can be any prejudice shown

1 that if this Court allows him to intervene, that the  
2 class is somehow prejudiced. But if you don't allow  
3 Mr. Shepherd to intervene, he is going to be  
4 prejudiced.

5 There was a comment that was made that what is in  
6 Mr. Shepherd's interest is not good for the rest of the  
7 class. And really, that's something we should discuss  
8 with respect to our other motion. But it goes back to  
9 what we believe is important, that there be full  
10 disclosure about all of these issues so that this Court  
11 can make a determination about a settlement, if that's  
12 going to be where this case leads.

13 And we are concerned at this point because  
14 Mr. Leventhal made the remark that they had been  
15 successful in making their actual charges claims.  
16 Well, they've also lost that argument. They lost it in  
17 Gooch. They've lost it in Oklahoma. They've lost it  
18 in other places.

19 Those are the kind of things that would be  
20 information that would be valuable to the Court to make  
21 a determination. That's what we've asked for is to  
22 intervene so that we can present some of this  
23 information, perhaps conduct some limited discovery,  
24 however the Court may proscribe it, to provide you with  
25 information so that you can make those decisions if you

1 believe that this is, in fact, the right and correct  
2 forum for any of this, for a class action that involves  
3 residents from all over the country in a situation that  
4 involves the application of insurance benefits to those  
5 people when the cases have -- under CAFA, have been  
6 removed previously to federal court under exclusive  
7 jurisdiction of those courts because the very argument  
8 was, class actions of this type, the Congress intended  
9 for those to be heard in federal court.

10 And they were, at one time, in federal court.  
11 But now they're before this Court, and we believe that  
12 is improper, as well. I really think most of the rest  
13 of my arguments, Your Honor, are going to be related to  
14 the second motion.

15 THE COURT: Well, I think it's time.

16 MR. DAN TURNER: Sir?

17 THE COURT: I'll let you go ahead.

18 MR. DAN TURNER: Move right into that?

19 THE COURT: Move right into that.

20 MR. DAN TURNER: Okay. Our position on that,  
21 Your Honor, is -- really, there are two issues. The  
22 first I've mentioned several times already, and that is  
23 the jurisdictional issue and the issues of CAFA; the  
24 fact that, as I said, before the defendant had  
25 successfully, in several of these cases, removed these



1 cases to federal court under the exclusive jurisdiction  
2 of CAFA. It's our position, number one, that it would  
3 be improper for this Court to consider this case any  
4 further in light of that. It's also of concern that --  
5 as I said before, that these settlements were not  
6 presented in front of federal district courts in --  
7 whether it be in Arkansas, Michigan, Mississippi, or  
8 Louisiana.

9 But in addition to that argument, our other  
10 argument with respect to the motion to stay is, at this  
11 point, because we didn't have the hearing previously,  
12 at which point, the notices, we believe, are obsolete.  
13 I fully anticipate there is going to be a disagreement  
14 on this. But I would encourage the Court to look at  
15 Rule 23 because our procedural rule, unlike some of the  
16 other states and federal requirements, actually sets  
17 forth the procedure for when you have a compromise of a  
18 class action.

19 And I think if you look at that rule, it's very  
20 clear that absent class members -- because this Court  
21 is looking out for the interest of those absent class  
22 members, that absent class members are entitled to  
23 notice so that they can attend that fairness hearing  
24 and they can see what arguments are made for or against  
25 any type of settlement. There is no way that an absent

1 class member can be given a claim form before that  
2 hearing and asked to make that determination, if they  
3 want to participate or not, in advance when there's a  
4 notice requirement. Otherwise, the notice requirement  
5 is meaningless.

6 If any class member is expected to make a  
7 decision as to whether or not he or she is going to  
8 file a claim before they even get to come to the  
9 hearing that they have the right, under our rule, to be  
10 noticed to appear at and, as a matter of due process,  
11 to show up and attend, there is no way that can be  
12 correct.

13 And so because that has not taken place, and  
14 those deadlines are now obsolete, I think this Court --  
15 it's our position that the Court should set aside that  
16 motion. All those deadlines would have to be reset.

17 Of course, we believe that there are  
18 jurisdictional issues under CAFA, as I've talked about.  
19 But there is no way it could be fair to absent class  
20 members. And at this point, I don't think the class  
21 members that are out there have no idea what is going  
22 on in this case, or when the next hearing is going to  
23 be or anything of this nature. But certainly they're  
24 entitled to be provided notice of that.

25 Now, a lot of the issues that we've raised we

1 think fit within our motion to set aside, too, the same  
2 arguments about information to be provided to this  
3 Court to make a decision about the fairness of any type  
4 of settlement. We think this Court should be provided  
5 with all that information after Mr. Shepherd is allowed  
6 to intervene and conduct some discovery and then  
7 present arguments about that issue. But those are  
8 basically our two positions, in addition to our  
9 pleadings that we've filed. And I'll answer any  
10 questions about that, as well.

11 THE COURT: All right. Response, Mr. Leventhal  
12 or Ms. McCabe, as the case may be?

13 MR. LEVENTHAL: Your Honor, first, I think that  
14 this motion to -- which is entitled a motion to set  
15 aside the preliminary approval order and motion for  
16 stay of proceedings shows simply that Shepherd doesn't  
17 have any valid purpose to intervene. It's what we  
18 argued before. This is the purpose to intervene is to  
19 stay the class settlement.

20 There's not one legitimate reason articulated in  
21 the motion as to why this settlement should be stayed.  
22 There is not one case cited -- let alone setting aside  
23 a preliminary approval order, there is not a single  
24 case cited in the motion, nor did I hear one presented  
25 in oral argument, to stay the settlement at this point.

1 The one case that is on point is, ironically, the Gooch  
2 case, because that's the case where they ran to the  
3 district court to enjoin this settlement. And by the  
4 way, they made this same CAFA class action fairness act  
5 argument that you just heard, which is very strange.  
6 But it was rejected by the Sixth Circuit, and let me  
7 explain what it is.

8 What they're saying is that because there were  
9 some federal cases filed, and then we consolidated them  
10 and decided to settle them in a single action, that  
11 that can't be done in state court. Why not? It's done  
12 all the time. How did we take the plaintiffs from six  
13 different actions and combine them into one case? We  
14 filed a consolidated case here in Arkansas, which was  
15 the center -- really, the geographical center for this  
16 because this is where the company is located. This is  
17 where the Pipes case before Judge Wright was pending,  
18 and also the Runyan case in federal court.

19 Why is that proper? Well, why is it not proper?  
20 It is proper. There is concurrent jurisdiction in the  
21 state courts over all those plaintiffs. There is  
22 concurrent jurisdiction on the subject matter. There  
23 is no jurisdictional problem with this case being  
24 pending here.

25 And this case -- I don't want to sound like a

1 broken record. This case is a consolidated settlement  
2 of the plaintiffs from all those other cases. It's not  
3 as though all of a sudden we got together and filed a  
4 case here and then settled it. You know, nothing else  
5 happened. I mean, you could try to ignore it, if you  
6 want. But the facts are in the record. There's  
7 declarations in the record. And the facts are that  
8 this is a negotiated settlement after several years of  
9 litigation, and those cases were combined into this  
10 case. There's nothing wrong with that. The Class  
11 Action Fairness Act does not require us to do that in  
12 federal court.

13 That was the argument that was made to the Sixth  
14 Circuit. That was the argument made by Mr. Gould, who  
15 represents Audry Hunter, who will be here on  
16 October 1st. His big argument -- he appeared as an  
17 amicus in the Gooch case and argued to the district  
18 court that the district court should enjoin this  
19 settlement because of this class action fairness  
20 argument.

21 The argument is based on the faulty assumption  
22 that there is -- that the Class Action Fairness Act  
23 created exclusive jurisdiction in the federal court.  
24 It did not. What it allowed is cases to be removed to  
25 federal court when they involve multiple states. So

1 multi-state class actions became more easily removable  
2 to federal court. It doesn't mean you have to settle a  
3 case in federal court or you can no longer settle cases  
4 in state court. So that argument has been made and has  
5 been rejected.

6 The second thing I'll briefly respond to is this  
7 idea that notices now need to be resent to the entire  
8 class. There is absolutely no merit whatsoever to  
9 that. First of all, the preliminary approval order  
10 expressly says that the Court has the authority to  
11 continue or stay or reschedule the fairness hearing.

12 And secondly, there is no reason for that at all.  
13 The notice went out. The deadlines for opting out have  
14 passed. The deadlines for objecting have passed to  
15 file written objections with the Court. And if you  
16 wanted to appear at the fairness hearing, you had to  
17 file a notice of intent to appear. That deadline has  
18 passed.

19 The only people that need notice are those that  
20 filed notices of intent to appear and those lawyers who  
21 have appeared as objectors or moved to intervene in the  
22 case. So there's no reason to renotice the entire  
23 class. There is no merit to that argument whatsoever.  
24 Let me see if I have anything else. I think that's it,  
25 Your Honor.

1 MR. BAUDIN: Your Honor, Stan Baudin, again, on  
2 behalf of the plaintiff class. In addition to defense  
3 counsel's arguments to the Court, at this point,  
4 Shepherd is not a party to this action, and he has no  
5 standing to bring the motions. Only if he is allowed  
6 to intervene, which this Court has not ruled on yet,  
7 will he have standing to even bring the motions before  
8 the Court.

9 Contrary to the arguments of Mr. Shepherd, no  
10 deadlines have been rendered obsolete in this case.  
11 Your Honor is hearing these motions in advance of the  
12 final fairness hearing, which is what Mr. Shepherd  
13 requested as part of his motion in the first place.

14 Further, Your Honor, the Arkansas Rules of Civil  
15 Procedure do not require renote to the class members  
16 in this case. The class members were previously given  
17 notice that the hearing date was subject to change.  
18 And all any class member has to do today is call class  
19 counsel, defense counsel, or the clerk of court to find  
20 out if the hearing had been continued, stayed, and when  
21 it will be reset.

22 Finally, there's no need to stay these  
23 proceedings pending further consideration of the  
24 matters in the Gooch case, Your Honor. The US Sixth  
25 Circuit has overruled the stay that was issued by the

1 district court judge in that case, and that is why we  
2 are here today proceeding with these motions. So for  
3 all these reasons, Your Honor, we believe  
4 Mr. Shepherd's motions should be denied. Thank you.

5 MR. DAN TURNER: Your Honor, the Rules of Civil  
6 Procedure that applies, I think, addresses this. I  
7 think clearly, absent class members are entitled to  
8 notice. Yes, the settlement agreement may say that the  
9 case may be continued, but how does someone in  
10 Washington or Alabama know when that date is continued  
11 to?

12 And it's fascinating to me that the plaintiffs --  
13 plaintiffs' counsel would object to notice being resent  
14 to potential class members when it should be everyone's  
15 objective here, aside from the defendants, to look out  
16 for the interests of the absent class members. And  
17 certainly that's what the Court is going to do, I know,  
18 is to look out for those interests.

19 Those people -- all of them are entitled to  
20 notice of this. And I'm not citing any cases. I just  
21 direct the Court to the Rules of Civil Procedure. And  
22 as I said, I think that's a rule that's not consistent  
23 with other jurisdictions. But I think clearly, the  
24 purpose of that is to provide fairness in the  
25 information to class members. And it makes zero sense



1 that you could expect a class member to make decisions  
2 before that hearing is held, and they are able to take  
3 in all of that information.

4 Mr. Leventhal said that there was not one case  
5 cited. Again, I cite the Court to the rule. But I  
6 don't believe there's a case to be cited because I  
7 can't imagine that there's reported authority regarding  
8 a situation where a defendant has defeated a plaintiff  
9 procedurally and has no other pending issues with any  
10 of the plaintiffs, and comes into a court and settles  
11 with them, which is what has happened in this case.

12 I mean, none of these other plaintiffs had even  
13 motions for class certification set in any of these  
14 other jurisdictions. The one substantive action that  
15 took place was the hearing before Judge Wright, and she  
16 declared no class. Plaintiffs inadequate. And then  
17 they settled with those people, and not in her court.

18 On the motion to stay, Your Honor. I'm sorry. I  
19 deliberately didn't talk about those. We'll rest on  
20 our pleadings there, Your Honor. It's our position --  
21 I did neglect to mention one thing that we disagree  
22 with. Mr. Leventhal said the Sixth Circuit has ruled  
23 on this. There is a motion pending. I hope the Court  
24 has a copy of it. We submitted it as notice --

25 THE COURT: I'm not sure if I've got a copy of

1 it, but I am aware, I guess -- I'll tell you what I  
2 think and what I think I'm aware of, and you can decide  
3 whether or not I need to be corrected. Is that what I  
4 am going to call the Memphis district court, because  
5 I'm not familiar with the districts. It may be that  
6 the District Court of Tennessee, Western Division, or  
7 whatever, filed what it filed. And whether or not that  
8 was an injunction telling the defendants or the parties  
9 in this case to remove their pleadings so I couldn't  
10 rule on them or, in the alternative, telling me I  
11 couldn't rule on them, I don't know that the final  
12 result is different in either way, was made by the  
13 Tennessee judge. He was -- that ruling was appealed to  
14 the Sixth Circuit. He was reversed. And then there's  
15 been a motion for rehearing en banc before the Sixth  
16 Circuit. Is that the correct circuit?

17 MR. DAN TURNER: Yes, sir. I think that's  
18 accurate.

19 THE COURT: And so whether or not I've got the  
20 motions or orders, that's what I understand to be the  
21 situation.

22 MR. DAN TURNER: Yes, sir.

23 THE COURT: And that you're taking the position  
24 that the motion for rehearing en banc essentially sets  
25 aside the panel's decision reversing the Memphis judge.

1 MR. DAN TURNER: I want to be careful, Judge.  
2 It's not our position to say you can't make the ruling.  
3 But to the extent that that argument was made that  
4 those jurisdictional questions have been raised and  
5 rejected, I'm saying the entire panel of the Sixth  
6 Circuit --

7 THE COURT: I don't take any of this personally.  
8 And he may or may not be able to do what he's done or  
9 not, or whatever. And I have an academic interest in  
10 how all of this works, but I don't take anything  
11 personal about how it's going down -- I guess I should  
12 say yet. I'm kidding. I understand your sensitivity  
13 and appreciate it, but it's unnecessary.

14 MR. DAN TURNER: Okay. But that's -- we'll rest  
15 on our pleadings on the other issue, Your Honor. If  
16 the Court has any other questions.

17 THE COURT: Did I get all that right? I assume  
18 that's kind of where we are on all of that, the best I  
19 can understand. I'm not sure I completely understand.

20 MR. DAN TURNER: I think so, Your Honor. If I  
21 could ask Mr. Sinclair, because he's filed the petition  
22 for rehearing.

23 MR. SINCLAIR: Hello, Your Honor. Tom Sinclair.  
24 I'll address briefly the Court's question on the  
25 procedure in front of the Sixth Circuit. The all writs

1 motion was granted. The defendants were ordered to do  
2 certain things, take certain actions. The emergency  
3 motion or expedited request for their motion was  
4 granted. The panel of three judges of the Sixth  
5 Circuit stayed the injunction and then ordered an  
6 expedited appeal on their appeal of the injunction.  
7 And we just yesterday received notice that -- well,  
8 their brief was filed on the appeal and ours is due  
9 here in a couple of weeks, and the Sixth Circuit is  
10 going to be taking it up the first or second week of  
11 November.

12 So technically, there has been a stay of -- a  
13 three judge panel at the Sixth Circuit has stayed the  
14 district court's all writs order. So I just want to  
15 make sure technically, but yes. There is presently the  
16 arguments about what the mandate is of the panel, I  
17 read what they filed last night at 4:30 and I took a  
18 look at it. There is equal arguments on both sides of  
19 this issue.

20 THE COURT: Of what? Equal arguments as to  
21 whether or not it's stayed or not?

22 MR. SINCLAIR: Exactly. The mandate -- the  
23 argument presented here is that the filing of a  
24 petition for hearing en banc, it equates to a stay of  
25 the mandate. That's in the rules. It's quoting from

1 the rules. Now, the counter-argument they presented in  
2 a pleading actually, as an officer of the court, I want  
3 to point out something to you. They didn't present  
4 their best argument in their pleading.

5 The best argument that they've got that counters  
6 that argument is that under the local rules of the  
7 Sixth Circuit, a granting of the petition for hearing  
8 en banc operates to, quote, set aside, end quote the  
9 panel's decision. So if that decision has already been  
10 set aside by simply the filing, it's not necessary to  
11 use that verbiage when they grant.

12 So I'm not real sure, looking at it as a  
13 practitioner. I know there's an argument on both sides  
14 of the issue. I'm not sure what the Sixth Circuit is  
15 going to do with both of those arguments, if they  
16 eventually hear them. But just so you are aware, Your  
17 Honor, it is the petition filing that stays the  
18 mandate. But then there's another argument, and they  
19 didn't point it out in the pleading, and I wanted to  
20 point it out to you, as an officer of the court.

21 I think they've got an equal argument on the  
22 other side of it. Either way, I hope you won't take  
23 any of the pleadings that I have to sign in other  
24 courts on a personal basis. I don't believe you have.  
25 And I want to make sure it's clear, I'm not concerned

1 with proceeding here as a practitioner. I want to make  
2 that clear on the record, and I've made it clear to the  
3 other courts when I signed those pleadings. Thank you,  
4 Judge.

5 THE COURT: You're welcome. Anything else for  
6 the record?

7 MR. LEVENTHAL: I would like to briefly address  
8 that, Your Honor.

9 THE COURT: Okay.

10 MR. LEVENTHAL: There are not equal arguments on  
11 both sides of that issue. What they have simply argued  
12 to the Court was that by filing a petition for  
13 rehearing en banc, that somehow that stayed the order  
14 of the Sixth Circuit. It did not stay the order of the  
15 Sixth Circuit.

16 THE COURT: Well, I understood Mr. Sinclair's --  
17 whether or not this is what he said, this is what I  
18 understood. That it wasn't the filing of the petition,  
19 it was the order granting acceptance of that that  
20 stayed it. And there -- that may not matter either.

21 MR. LEVENTHAL: There has been no acceptance of  
22 the petition.

23 THE COURT: I mean, I guess what I'm saying is,  
24 you can ask for certiorari or rehearing and it can be  
25 denied.

1 MR. LEVENTHAL: Right.

2 THE COURT: You can ask, and it's not until they  
3 grant you that rehearing that anything happens. And I  
4 guess that may just be a small matter of semantics, but  
5 that's what I understood Mr. Sinclair to say.

6 It didn't get stayed just because we asked for a  
7 rehearing. Arguably, it got stayed because we got  
8 granted a rehearing. It may not -- I suspect that  
9 doesn't make any difference to your argument.

10 MR. LEVENTHAL: I just want to make clear, the  
11 rehearing has certainly not been granted.

12 THE COURT: Okay. I didn't have a way of knowing  
13 that one way or the other. That wasn't part of the --  
14 only that it has been requested.

15 MR. LEVENTHAL: So as we sit here, a petition for  
16 rehearing has just merely been filed. In his papers,  
17 he argued that the mere filing of that stayed the Sixth  
18 Circuit's order because he called it a mandate. It is  
19 not a mandate. It was a ruling on an emergency motion.

20 A mandate is the final judgment of the Sixth  
21 Circuit. So it doesn't -- it has not been stayed. And  
22 if you are right and he is now conceding that nothing  
23 happens and it's not stayed until, you know, the Sixth  
24 Circuit grants a petition for rehearing en banc, yeah,  
25 we would agree with that.

1           So there is nothing, as we stand here now -- the  
2   whole purpose of the emergency motion was to allow the  
3   fairness hearing to go forward, and that's what the  
4   Sixth Circuit ruled on. And they said we had a  
5   likelihood of success on the ultimate merits of the  
6   appeal. And if they didn't grant our emergency motion,  
7   we would suffer irreparable harm. I just wanted to  
8   make that clear.

9           THE COURT: I guess I need to state as a  
10   practical matter, until we had these hearings, nothing  
11   was going to happen. It didn't matter if I got stayed  
12   or not. I didn't think he could stay these motions to  
13   intervene. And so I guess until today or tomorrow or  
14   arguably October the 1st, I hadn't worried about  
15   whether or not I've been stayed or not because it's  
16   only going to proceed as fast as it can.

17           And at some point, if we move to decisions that  
18   are going to be made and somebody doesn't want it,  
19   they'll either ask me not to do it or they'll send a  
20   marshal over here. I don't know. But I know them all  
21   down the street.

22           But I've still got to make a decision on the  
23   case. And I'm not taking it personal, but it hasn't,  
24   up to this hour, made any difference to me. That's  
25   probably a bad thing to say on the record. But I don't



1 know, as a practical effect, that it makes any  
2 difference up to this very point. And I know that  
3 they're saying I can't do anything beyond these, and  
4 I'm going to make a decision on that.

5 But your point is well taken, and I have not  
6 looked at the Sixth Circuit local rules. I haven't --  
7 I know from a state court point of view, if you lose a  
8 case at this level and you appeal it, you've still lost  
9 it until you get it reversed on appeal. And that may  
10 be the argument you're making.

11 Now, whether or not that applies in the federal  
12 courts in Tennessee, I don't know. But your point is  
13 well taken. If we get to that point, and you're right  
14 that the full panel of the Sixth Circuit doesn't hear  
15 this until November 1st, much less rule on it, then  
16 we'll probably find out what they can do because I'm  
17 likely going to be faced with that decision, whether or  
18 not I make a decision and they let it have effect or  
19 not.

20 MR. LEVENTHAL: Well, just to clarify, Your  
21 Honor, the Sixth Circuit is not waiting until November  
22 to decide that petition for rehearing en banc. That's  
23 been filed, and it will be circulated among the  
24 justices, and they will decide yes or no whether  
25 they're going to hear it en banc.

1           The appeal -- there's an appeal of the  
2       injunction, the appeal itself. And it's been  
3       consolidated with a petition for mandamus in the Gooch.  
4       There has been consolidated briefing ordered. And so  
5       there is now -- our brief has been filed. Their briefs  
6       will be filed. And then an oral argument has been set  
7       for November. That has nothing to do with the petition  
8       for rehearing en banc.

9           So as we sit here today, our point is that we  
10      went in and got an emergency order staying that  
11      injunction, so we're back to the status quo. We would  
12      like to have the fairness hearing rescheduled. And  
13      there is nothing, as we sit here today, preventing that  
14      from happening. Unless there's any questions --

15           THE COURT: Well, does everybody agree with me  
16      that if I set a fairness hearing -- I'm saying in the  
17      abstract. If I set a fairness hearing, whether or not  
18      I'm stayed between now and then doesn't really have  
19      much effect until we get there?

20           MR. LEVENTHAL: That's right. There's nothing.

21           THE COURT: There's nothing that's going to be  
22      happening between then and now other than me ruling on  
23      these motions to intervene and what not. So --

24           MR. LEVENTHAL: I mean, I don't think anyone has  
25      an argument that the Court cannot reschedule the

1 fairness hearing.

2 THE COURT: No. I understand that. And I guess  
3 to the extent that that's unresolved over in Tennessee,  
4 I've been trying to proceed without, I guess, testing  
5 their authority. I mean, there isn't any point in you  
6 picking a fight in that saying -- I'm not going to  
7 stand over there going, "You can't tell me what to do,"  
8 if I don't plan on doing anything before that anyway.

9 MR. BAKER: The whole reason our clients went and  
10 filed all this stuff in federal court is to free you up  
11 to proceed with adjudicating this class settlement as  
12 quickly as you can, because there are thousands of  
13 people and millions of dollars that are being held up  
14 because of the Gooch lawyers' fancy filings.

15 And so we don't want -- and with all due respect  
16 to my experience in the Eighth Circuit, at least, it  
17 could be a long time before these people rule on all  
18 these fancy things. Right now, the point is, you are  
19 free to rule on this case however you want to rule.  
20 And we do not want Your Honor to put this thing on a  
21 shelf. We want you to move quickly because there are  
22 thousands of people impacted by this, and our company  
23 is impacted by it.

24 THE COURT: Well, and I guess my comments were  
25 that I'm likely to do that. And then once that

1 decision has been made, to see if it has any effect. I  
2 mean, kind of like making decisions when I've been  
3 stayed in bankruptcy. And they say you can say what  
4 you want, you can rule what you want. It doesn't have  
5 any effect, because you've been stayed.

6 MR. BAKER: My point is, we don't want this Court  
7 to slow this case down. We want this Court to proceed  
8 quickly.

9 THE COURT: I'll get Debbie right on that. Okay.  
10 Have I padded your record in case they want this  
11 transcript? Anything further before we go off the  
12 record? Scratching your head, not raising your hand.  
13 We're in recess.

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C E R T I F I C A T E

STATE OF ARKANSAS )  
 ) SS.  
COUNTY OF PULASKI )

I, TAMMIE L. FOREMAN, CRR, RPR, CCR, official court reporter for the Third Division Circuit Court, Pulaski County, Arkansas, certify that I reported the proceedings by stenographic machine shorthand, reporting in the case of

EDISON RUNYAN; DWIGHT PIPES; EARL L. PURIFOY; JOHN ROSS, As the Legal Representative of ELIZABETH ROSS; MARY WEIDMAN, DURAIN WEIDMAN; MARION HARRIS; and VAN R. NOLAN, Each Individually, and on Behalf of All Others Similarly Situated,

Plaintiffs

V. CV 2009-2066

TRANSAMERICA LIFE INSURANCE COMPANY; LIFE INVESTORS INSURANCE COMPANY OF AMERICA; MONUMENTAL LIFE INSURANCE COMPANY; and AEGON USA, INC.,

Defendants

before the Honorable Jay Moody, Pulaski County Circuit Judge, at Little Rock, Arkansas; that said proceedings have been reduced to a transcription by me by means of computer-aided transcription, and the foregoing pages 1 through 26 constitute a true and transcript of the proceedings held to the best of my ability, along with all items of evidence admitted into evidence.

I further certify that I am not a relative or employee of any of the parties, or of counsel, nor am I financially or otherwise interested in the outcome of this action.

I serve as an impartial officer of the court and abide by all professional and ethical principles of the National Court Reporters Association.

WITNESS MY HAND AND SEAL on this 26th day of October, 2009.

Tammie L. Foreman  
Notary Public in and for the State of Arkansas  
My Commission Expires 04-18-2011

*Tammie L. Foreman*  
TAMMIE L. FOREMAN, CRR, RPR, CCR  
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PULASKI County, Arkansas  
SUPREME COURT  
No. 305  
NATIONAL COURT REPORTERS ASSN.  
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TAMMIE L. FOREMAN, CRR, RPR, CCR  
(501) 340-8426